



POLICY BRIEF



BIDEN'S COVID-19 BORDER CRISIS

President Biden's failure to enforce federal law at the southern border has led to an historic humanitarian and public health crisis. While the Biden Administration maintains high standards for COVID-19 restrictions for American citizens, like threatening people to "[g]et vaccinated or continue to wear your mask" and keeping federal employees at maximum telework, they simultaneously threaten to risk importing new cases from undocumented immigrants into the U.S. by rolling back use of Title 42.¹ This title has protected Americans from new exposure of COVID throughout the pandemic.

Since President John Adams, public health service commissioners have taken various roles to protect American citizens from the serious threat of disease.² In 1893, Congress enacted Title 42, which expanded the authority of the President and the Surgeon General in cases of public health emergencies by allowing them to suspend immigration.³

- Under Title 42, the Department of Health and Human Services (HHS) and the Centers for Disease Control and Prevention (CDC) may prohibit entry into the United States from another country if there is a "serious danger of the introduction" of a communicable disease from the country of origin, in order to protect the "interest of the public health."⁴
- On March 20, 2020, in response to the public health threat from COVID-19, HHS and the CDC announced a suspension of accepting immigrants arriving from Mexico and Canada under Title 42. The announcement cautioned that "The public health risks of inaction are stark."⁵ Although President Biden has maintained Title 42 for adults, he has exempted families and children.⁶ From October 2020-May 2021, CBP has denied entry to 640,000 immigrants under Title 42 due to the risk of spreading COVID-19.⁷

While U.S. COVID-19 cases decrease and vaccination rates increase, COVID-19 remains a threat globally.

- Many immigrants arrive from Brazil, Guatemala, and Mexico, where COVID is rampant. From July 19- July 26, Guatemala had 109 infections per 100,000 people, Mexico had 70 infections per 100,000, and Brazil had 147 infections per 100,000.⁸ The U.S. also had 112 infections per 100,000.⁹
- The CDC maintains a level 3 "COVID-High" precaution for travel to Mexico.¹⁰ If Americans are warned against traveling to Mexico, then they should not be forced to admit illegal immigrants traveling from there.
- During the first week of July 2021, 26,000 migrants were detained at an Immigration and Customs Enforcement (ICE) facility for illegally crossing the border, among whom 7,500 new cases of COVID-19 have been reported, that is about 1 in every 3.5.¹¹
- The Biden Administration's lack of health and safety precautions, transit of detainees between facilities, and low vaccination rates among immigrants pose a danger for spread of COVID in the U.S.¹² Moreover, in March 2021, Customs and Border Patrol (CBP) admitted they were not testing migrant children held in crowded border facilities. These children reportedly remained untested until they were transported inside the U.S, with many testing positive for COVID after the transfer.¹³

As the pandemic continues globally, Congress should support border policies that protect the United States from the danger of spreading communicable diseases. For example, H.R. 471, the Protecting Americas from Unnecessary Spread upon Entry from COVID-19 (PAUSE) Act of 2021, would require Title 42 to remain in effect until all public and federal public health emergencies for COVID-19 end and the CDC health risk level for Canada and Mexico is reduced to level one.¹⁴

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- ¹ Kight, Stef. "Scoop: White House eyes ending migrant family expulsion by July 31." Axios. June 20, 2021. <https://www.axios.com/scoop-white-house-eyes-ending-migrant-family-expulsion-b6d0a178-001e-41e8-9f5b-17cc7547cccc.html>
- ² "Our History" Commissioned Corps of the U.S. Public Health Service. <https://www.usphs.gov/history>
- ³ "Scope of CDC Authority Under Section 361 of the Public Health Service Act (PHSA)." Congressional Research Service. April 13, 2021. <https://crsreports.congress.gov/product/pdf/R/R46758>
- ⁴ U.S. Code. 42 USC 265 <https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title42-section265&num=0&saved=%7CKHRpdGxIOjQyIHNIY3Rpb246MjY0IGVkaXRpb246cHJlbGltKQ%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim> and "Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions." U.S. Customs and Border Protection. <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>
- ⁵ "Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists." U.S. Department of Health and Human Services Centers for Disease Control and Prevention. March 20, 2020. https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf
- ⁶ Melchior, Jillian. "Biden's Border Crisis, Up Close." Wall Street Journal. March 29, 2021. https://www.wsj.com/articles/bidens-border-crisis-up-close-11617057522?mod=hp_opin_pos_1
- ⁷ "Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions." U.S. Customs and Border Protection. <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>
- ⁸ "Guatemala." Reuters Covid-19 Tracker. Accessed July 26, 2021. <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/countries-and-territories/guatemala/> and "Mexico." Reuters Covid-19 Tracker. Accessed July 26, 2021. <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/countries-and-territories/mexico/> and "Brazil." Reuters Covid-19 Tracker. Accessed July 26, 2021. <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/countries-and-territories/brazil/>
- ⁹ "United States." Reuters Covid-19 Tracker. Accessed July 26, 2021. <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/countries-and-territories/united-states/>
- ¹⁰ "Mexico." CDC Travel Information. June 7, 2021. <https://wwwnc.cdc.gov/travel/destinations/traveler/none/mexico>
- ¹¹ Maura Turcotte. "Virus cases are surging at crowded immigration detention centers in the U.S." New York Times. July 6, 2021. <https://www.nytimes.com/2021/07/06/us/covid-immigration-detention.html>
- ¹² Id.
- ¹³ Ainsley, Julia, Gutierrez, Gabe, and Soboroff, Jacob. "CBP not testing migrant children for Covid at border stations, though many test positive after transfer." NBC News. March 25, 2021. <https://www.nbcnews.com/politics/immigration/cbp-not-testing-migrant-children-covid-border-stations-though-many-n1262059> and Robles, Frances and Jordan, Miriam. "Covid on the Border: Migrants Aren't Tested on Arrival in U.S." The New York Times. April 28, 2021. <https://www.nytimes.com/2021/04/28/us/coronavirus-migrants-testing.html>
- ¹⁴ H.R. 471- Pause Act of 2021. Congress.gov. <https://www.congress.gov/bill/117th-congress/house-bill/471> and "Herrell Act of Stop the Spread of COVID-19 at the Border." Congresswoman Yvette Herrell. January 26, 2021. <https://herrell.house.gov/media/press-releases/herrell-acts-stop-spread-covid-19-border>